



The Town of Leesburg
MEMORANDUM
DEPARTMENT OF PLANNING and ZONING

To: Planning Commission

From: David Fuller, AICP, Comprehensive Planner *DF*

Subject: Form-based Code—work sheets for Jan 21st work session

Date: January 7, 2010

The Planning Commission has discovered that many important issues affect the ability of the form-based code (FBC) to accomplish the desired effect—to encourage redevelopment of an underutilized part of Town in a form that reflects the character of the Town.

The Commission has also recognized that a synergistic relationship exists among those issues. A decision on one issue will probably affect how another issue contributes to the goal of redevelopment.

To help the Planning Commission with its analysis of FBC issues and their relationships, staff has prepared the following information. This memorandum presents the major issues related to the FBC—a textual, summary description of the issues and possible alternatives to addressing those issues. Most of the issues can be explored in a matrix format that helps to display the possible combinations of the issues and alternatives. The combinations can be further explored by looking at a graphic display of the assumptions and consequences of the alternatives for each issue.

The following information is meant to provide a basis for discussion rather than a comprehensive presentation of the planning issues related to the draft FBC. As Commissioners review this material, they should take note of any additional issues, alternatives, or assumptions/consequences that come to mind. Those additional ideas can be brought into the Commission's discussions on January 21.

To focus efforts, Commissioners may wish individually to select an alternative for each issue, review the assumptions/consequences of the selected alternative and see if that alternative is still acceptable, and assess all of the selected alternatives to see if they form a coherent regulatory approach.

Issues

The Planning Commission discussed six major issues at its previous work sessions on the FBC. These issues and alternative solutions are presented in the first matrix attached to this memorandum.

1. Area of the FBC district. The size of the FBC district obviously determines the number of properties that would be subject to the FBC provisions; that in turn has a bearing on the number of property-owners who are interested in the regulations affecting the use of their property and the viability of existing structures. The size of the district also determines the amount of new infrastructure that will be needed. Finally, district size defines the extent of redevelopment in the desired form. These factors can be summed up as a balance of the number of affected property-owners and the amount of infrastructure needs on one hand (suggesting a smaller area) with the extent of desired redevelopment on the other hand (suggesting a larger area). The issue may best be framed with the questions, what area should be governed by the form-based code; and what area needs to be redeveloped?

Five alternative district sizes have been discussed. The smallest is the area encompassed in the Crescent District Master Plan, which sought to address major portions of the East Market Street and South King Street corridors outside of the H-1 Old and Historic District, and Catoctin Circle. The largest area was proposed in the first draft of the FBC, which extended the district to cover most of the B-2 Established Corridor Commercial District and to extend the entire length of the H-2 Historic Corridor Architectural Control Overlay District on East Market Street. The FBC Steering Committee recommended an area in between, extending along the East Market Street corridor far enough to provide for additional streets paralleling East Market Street while excluding the new development at its eastern end, and extending into the H-1 district to include the automobile salvage yard and adjacent properties off Harrison Street. Other alternatives include a district smaller than that in the Crescent District Master Plan, where market forces and Town supporting efforts could be focused; and a small focus area, such as that just described, in the midst of a larger district where the FBC could be optional (where it is not compulsory but is available to those property-owners who wish to take advantage of it).

2. The FBC as base vs. overlay zoning. This issue involves two types of zoning districts, which differ in the extent to which their provisions are mandatory. The provisions of the base zoning district are those which are standard zoning requirements for all properties in the district. An overlay district allows an alternative to the base zoning, so that a property-owner has the option of complying with the provisions of either the base or the overlay district. Whether the FBC is the base zoning (mandatory) or overlay (optional) will affect the speed of redevelopment that will occur in the desired form. The extent of options available to property-owners affects the acceptability of the new regulations to property-owners.

The FBC has generally been talked about as the base zoning for the district. This was the recommendation of the FBC Steering Committee. However, discussions have also considered the FBC as overlay zoning, where property-owners may choose between the FBC provisions and the regulations of the underlying, base zoning district (B-2 for most of the FBC area). In between is an alternative (such as the last alternative discussed in item 1, above), where the FBC is the mandatory zoning in a focused area but overlay zoning in a larger area.

3. Number of streets shown on the regulating map. The number of streets is important because of the blocks and block frontages they create, as well as the number and location of pathways available to pedestrians, bicyclists, and motorists. The resulting network of streets determines the degree of interconnectivity and overall level of service of the different modes of transportation. The large blocks in downtown Leesburg are about 400 feet on each side; one of those blocks (where Town Hall is located) accommodates the arrangement of development preferred under the FBC, where buildings are placed around the perimeter of the block and a parking garage is located in the middle of the block. Convenient blocks for pedestrians range in size from 200 feet up to 600 feet on a side.

The first draft of the FBC regulating map showed a full network of streets that were required to be built in the exact location shown on the map. The Steering Committee modified that alternative by keeping the same number of streets (within a smaller district; see issue #1) but designated streets in a couple of areas as flexible. For those streets, the property-owner could work with the town to relocate the streets provided the same general street pattern is maintained. Some people have suggested a third alternative, showing fewer streets on the regulating map. All the alternatives require considerable coordination to ensure a continuous network that is built out in meaningful phases as redevelopment of private property occurs, although the last alternative requires less coordination since it proposes fewer streets.

4. Responsibility for providing street improvements. All of the alternatives for issue #3 call for new streets with the FBC district. Construction costs are involved for automobile travel ways, parking lanes, medians for three streets, street trees, and sidewalks. Town utility and stormwater mains also have to be provided for within the rights-of-way. Depending on the particular situation, land for the right-of-way might have to be purchased. With the Town-initiated rezoning of the FBC district, the intention is that the property-owner does not incur these costs through rezoning proffers, the case for development elsewhere in the Town.

The current draft of the FBC provides one alternative for assigning responsibility for providing street improvements. In keeping with a principle of the Crescent District Master Plan to minimize public costs, the draft allocates responsibility to developer/owner, who has control of property/development—for streets located entirely on site and for the portion of streets that are partially on his property, as well as for improvements to the center line of existing streets that front his property. Another alternative would follow the street-improvement requirements of the

subdivision and land development regulations; in that ordinance, the property-owner is responsible for providing all on-site streets and half of all fronting streets (regardless of whose property the street is on). Another alternative takes a different approach by requiring each property-owner to pay his pro-rata share of all street improvements required by the regulating map.

5. Responsibility for providing the Public Open Space shown on the regulating map.

The regulating map shows Public Open Space designations for existing parks, Douglass School, natural resource areas (floodplains and creek valley buffers), and future plazas, as well as the median in the urban boulevard. Of particular concern are the future plazas, which the FBC requires the property-owners to provide. Such open space is one of the criteria for the bonus fifth-story.

The current draft of the FBC provides one alternative for assigning responsibility for providing the future Public Open Space. The owners of properties with Public Open Space designations are required to provide the spaces. Property-owners without such designations are not required to provide open spaces, although it is expected that many of them will provide open space to enhance the marketability of their projects. Another alternative would each property-owner to pay his pro-rata share of all Public Open Space required by the regulating map.

6. Threshold for expansion of nonconforming buildings to be in compliance with the FBC. Virtually all zoning changes create nonconformities of one kind or another—lot, use, or structure. The FBC creates no nonconforming lots, perhaps a couple of nonconforming uses (the more industrial ones); all buildings, except institutional ones, will become nonconforming as a result of the required build-to line, the façade and other design standards, or the minimum height requirement. Nonconforming buildings may continue to be used for their functional lives; and buildings destroyed by an act of God may be rebuilt as they were before the event. However, the difficulty occurs when an owner wishes to enlarge his nonconforming building, thus increasing the life of a building that does not comply with current regulations. Most communities place limits on how much he can expand his nonconforming building without having to comply with the current requirements. As in all nonconforming situations, the need is to balance the property-owner's right to use an existing investment (buildings, in the case of the FBC) with the public policy to eliminate the nonconformity and replace it with desirable development.

The FBC Steering Committee took a strong stand on this issue in preparing its recommended FBC. The current draft allows a one-time expansion of a nonconforming building not to exceed 10 percent of the floor area or 20 percent of the assessed value of the building; the draft, however, does allow unlimited repair and maintenance activities. A slightly different alternative could have the same provisions, except with higher thresholds, for example 20 percent for floor area and 30 percent for assessed value. Another alternative could be a stepped arrangement, as is done Portsmouth; under that alternative, the property-owner must comply with some regulations for a small expansion, more regulations for a larger expansion, and

all regulations for even larger expansions. In Portsmouth's case, the smallest expansion is in the range of the draft FBC's 10 and 20 percent, and the largest expansion (requiring full compliance) is for expansion larger than 50 percent. The most lenient alternative would be to allow unlimited expansion of existing buildings.

Analysis

The preceding section presents the issues that have been discussed extensively by the FBC Steering Committee and the Planning Commission. These issues need to be analyzed carefully in order to make reasoned changes to the draft FBC. The Commission's analysis should consider the alternative ways of addressing the issues. It is critical to keep in mind that a decision on one issue could affect the usefulness or fairness of another issue.

Commissioners may wish to use the last 6 attached matrices as they conduct their analysis. For each of the issues presented above, a graphic lists the assumptions and consequences of the various alternatives for addressing the issue. Some of the consequences listed for a particular alternative support it, and some do not.

Again, to focus your efforts, it is suggested that each Commissioner select a preferred alternative for each issue presented in the first matrix; review the assumptions/consequences for that alternative in one of the following matrices; and based on that information, decide if that alternative is still preferable. If not, the assumptions/consequences of one of the other alternatives can be reviewed. At January 21st work session, the Commissioners can compare their choices.

Of course, each Commissioner may wish to consider other issues and may want to add to or delete from the lists of assumptions/consequences. Such changes would contribute to the Commission's discussion of how to resolve the important issues that have been raised about the FBC.

Attachments:

- Matrix of Major Form-based Code Issues and Alternative Ways of Addressing Them
- Matrix of Assumptions/Consequences for Alternatives to Address Base vs. Overlay Zoning
- Matrix of Assumptions/Consequences for Alternatives to Address FBC District Area
- Matrix of Assumptions/Consequences for Alternatives to Address Number of Streets
- Matrix of Assumptions/Consequences for Alternatives to Address Responsibility to Provide Streets
- Matrix of Assumptions/Consequences for Alternatives to Address Responsibility to Provide POS
- Matrix of Assumptions/Consequences for Alternatives to Address Expansion of Nonconforming Structures

Matrix of Major Form-based Code Issues and Alternative Ways of Addressing Them

Alternative Issue	Most Flexible 1	2	Moderate 3	4	Most Stringent 5
Base/overlay zoning	FBC as overlay zoning for entire district		FBC as base zoning for focal area; overlay zoning elsewhere		FBC as base zoning for entire district
Area of district	Small district for catalytic project(s)	Focused district for base zoning; larger district for overlay zoning	Crescent District Master Plan district	Steering Committee area	First draft area
Number of streets	Reduced number of streets on regulating map		Fixed & flexible streets on regulating map		Fixed streets throughout district
Street responsibility	Per SLDR		Pro-rata-type arrangement		Per draft FBC: by lot owner
Public Open Space responsibility	Pro-rata-type arrangement				Per draft FBC: by lot owner
Nonconforming structure threshold	Unlimited expansion of existing structures		Per Portsmouth: stepped arrangement	Higher threshold than draft FBC	Per draft FBC: low threshold

Matrix of Assumptions/Consequences for Alternatives to Address Base vs. Overlay Zoning

assumptions

of SC, PC, TC;
of property-owners

FBC restricts property-owners' options
Many property-owners do not want FBC
Overlay district provides flexibility that property-owners desire

Focal area allows for concentration of market activity & Town resources
FBC restricts property-owners' options, but compliance required in focal area
Many property-owners do not want FBC
Overlay district provides flexibility in overlay area that property-owners desire
Area can be chosen that is suitable for public supporting project and responsive private investment

FBC provides consistency of development form
Many property-owners desire consistency of development form even if some property-owners do not want FBC
Base zoning provides consistency of development form that is needed to encourage redevelopment

Base/overlay zoning	FBC as overlay zoning for entire district		FBC as base zoning for focal area; overlay zoning elsewhere		FBC as base zoning for entire district
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presumed consequences

for property-owner,
for district,
for town

Flexibility increases acceptability of FBC by property-owners
Each property owner free to use FBC or not
Development form by neighbors may not be consistent with FBC
Opportunities for street/utility networks may be lost where property-owner does not use FBC

Overlay area increases acceptability by affected property-owners in that area
Required compliance with FBC in base; optional compliance in overlay
Consistent development form in base area; flexibility in overlay area
Opportunities for street/utility networks may be lost in overlay area
Opportunities for FBC-type development may be lost in overlay area

Required compliance increases acceptability by property-owners
All property-owners must comply with FBC
Neighbors' redevelopment complies with FBC
Opportunities for street/utility networks will not be lost but still difficult to achieve across property lines

Matrix of Assumptions/Consequences for Alternatives to Address FBC District Area

assumptions
of SC, PC, TC;
of property-owners

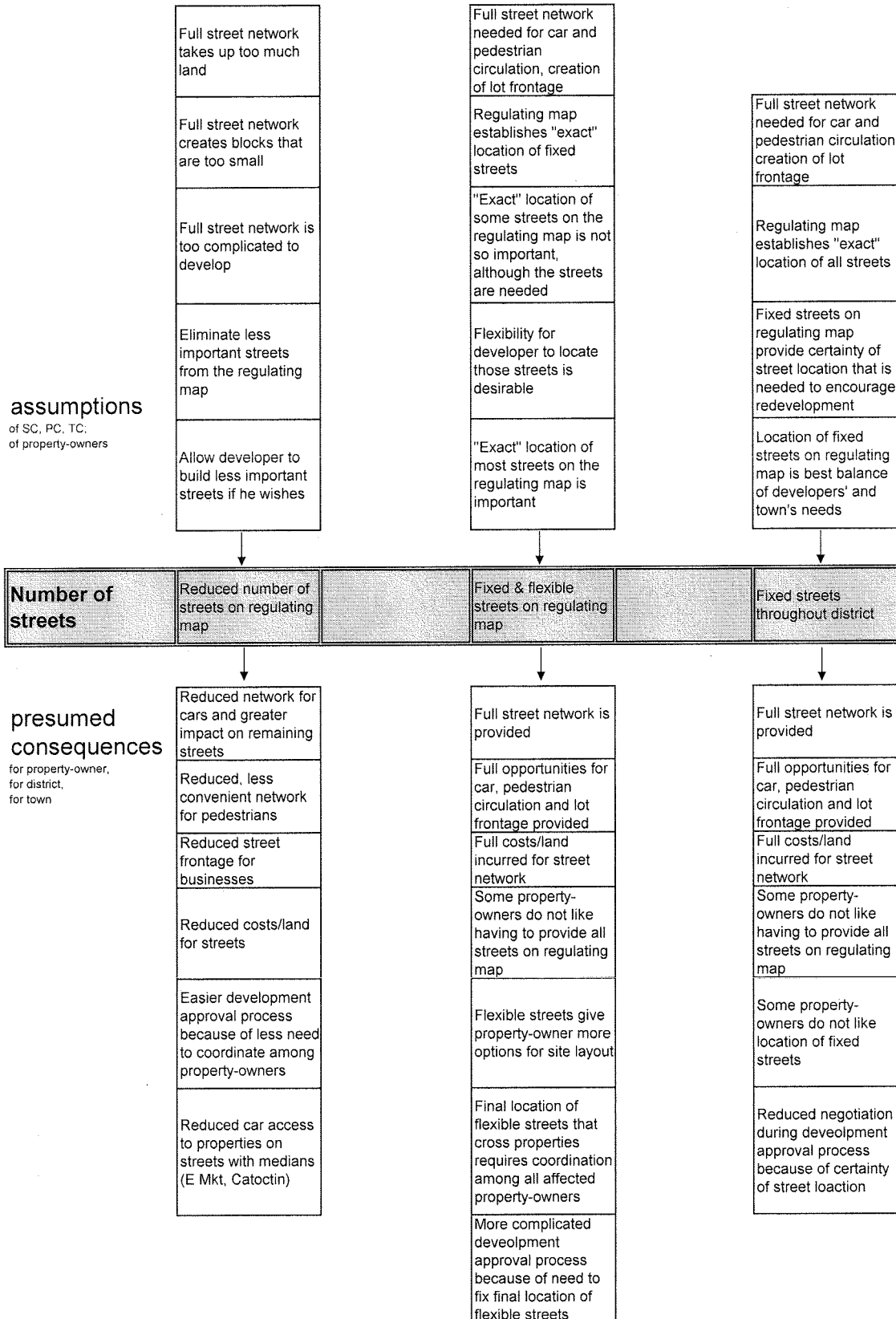
			Largest possible area with redevelopment potential	Need to reduce B-2 zoning district as much as possible
FBC restricts property-owners' options	FBC restricts property-owners' options, but compliance required in focal area	Create desired form along frontages of much of East Market Street	Streets parallel to East Market Street needed to support increased development	Need to eliminate H-2 overlay district on East Market Street inside Bypass
Many property-owners do not want FBC	Many property-owners do not want FBC	Many property-owners desire consistency of development form even if some property-owners do not want FBC	Many property-owners desire consistency of development form even if some property-owners do not want FBC	Many property-owners desire consistency of development form even if some property-owners do not want FBC
FBC district should be small to concentrate the impact of public and private efforts	FBC district should be small to concentrate the impact of public and private efforts	FBC provides consistency of development form that is needed to encourage redevelopment	FBC provides consistency of development form that is needed to encourage redevelopment	FBC provides consistency of development form that is needed to encourage redevelopment
A catalytic project(s) is needed to jump-start the redevelopment process	Overlay provides flexibility in overlay area that property-owners desire	Large area indicates town's commitment to redevelopment	Large area indicates town's commitment to redevelopment	Large area indicates town's commitment to redevelopment
Area can be chosen that is suitable for public catalytic project and responsive private investment	Area can be chosen that is suitable for public supporting project and responsive private investment	Do not extend FBC into H-1 district	Extend FBC into H-1 district to capture certain lots	Do not extend FBC into H-1 district

Area of FBC district	Small district for catalytic project(s)	Focused district for base zoning; larger district for overlay zoning	Crescent District Master Plan district	Steering Committee area	First draft area
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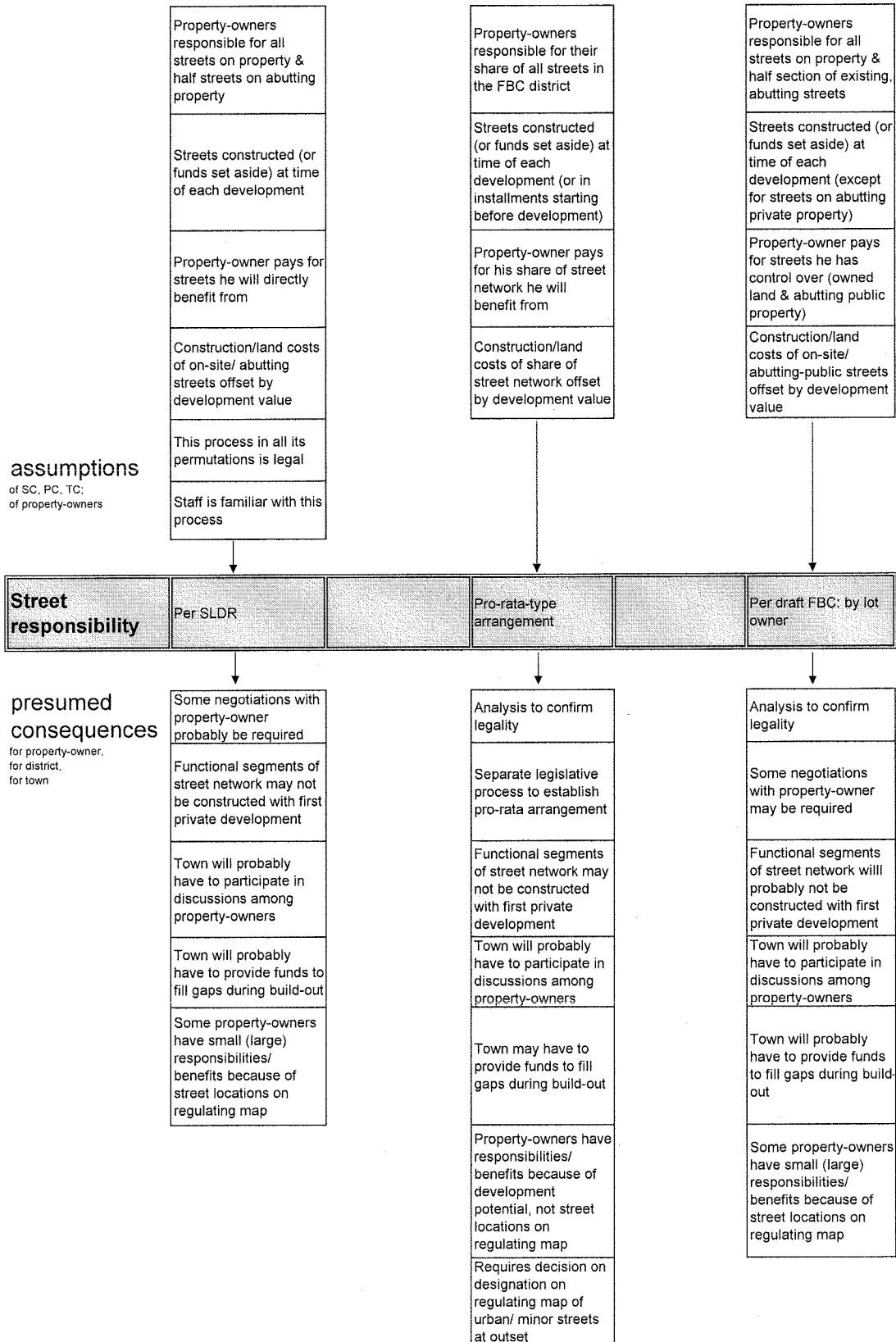
presumed consequences
for property-owner,
for district,
for town

Small district creates manageable amount of town support	Small district creates manageable amount of town support	All property-owners must comply with the FBC	All property-owners must comply with the FBC	All property-owners must comply with the FBC
Small (but large enough) area for private redevelopment activity	Small (but large enough) area for private redevelopment activity	All redevelopment complies with the FBC	All redevelopment complies with the FBC	All redevelopment complies with the FBC
Property-owners in supported area subject to FBC	Property-owners in supported area subject to FBC	Consistent development form within CDMP area	Consistent development form within area	Consistent development form within area
Small district increases acceptability by property-owners outside that area	Overlay area increases acceptability by affected property-owners in that area	Large area of potential redevelopment requiring town support	Large area of potential redevelopment requiring town support	Large area of potential redevelopment requiring town support
Opportunities for FBC-type development outside of small district may be lost	Required compliance with FBC in base; optional compliance in overlay	Large area for market forces: long time before potential redevelopment under FBC occurs for many property-owners	Large area for market forces: long time before potential redevelopment under FBC occurs for many property-owners	Large area for market forces: long time before potential redevelopment under FBC occurs for many property-owners
Opportunities for street/utility networks outside of small district may be lost	Consistent development form in base area; possible inconsistent form in overlay area	Large area for market forces: long time to realize desired form in CDMP	Large area for market forces: long time to realize desired form in area	Large area for market forces: long time to realize desired form in area
	Opportunities for street/utility networks may be lost in overlay area	Opportunities for full extent of streets parallel to East Market Street may be lost	Sufficient extent of streets parallel to East Market Street realized	
	Opportunities for FBC-type development may be lost in overlay area			

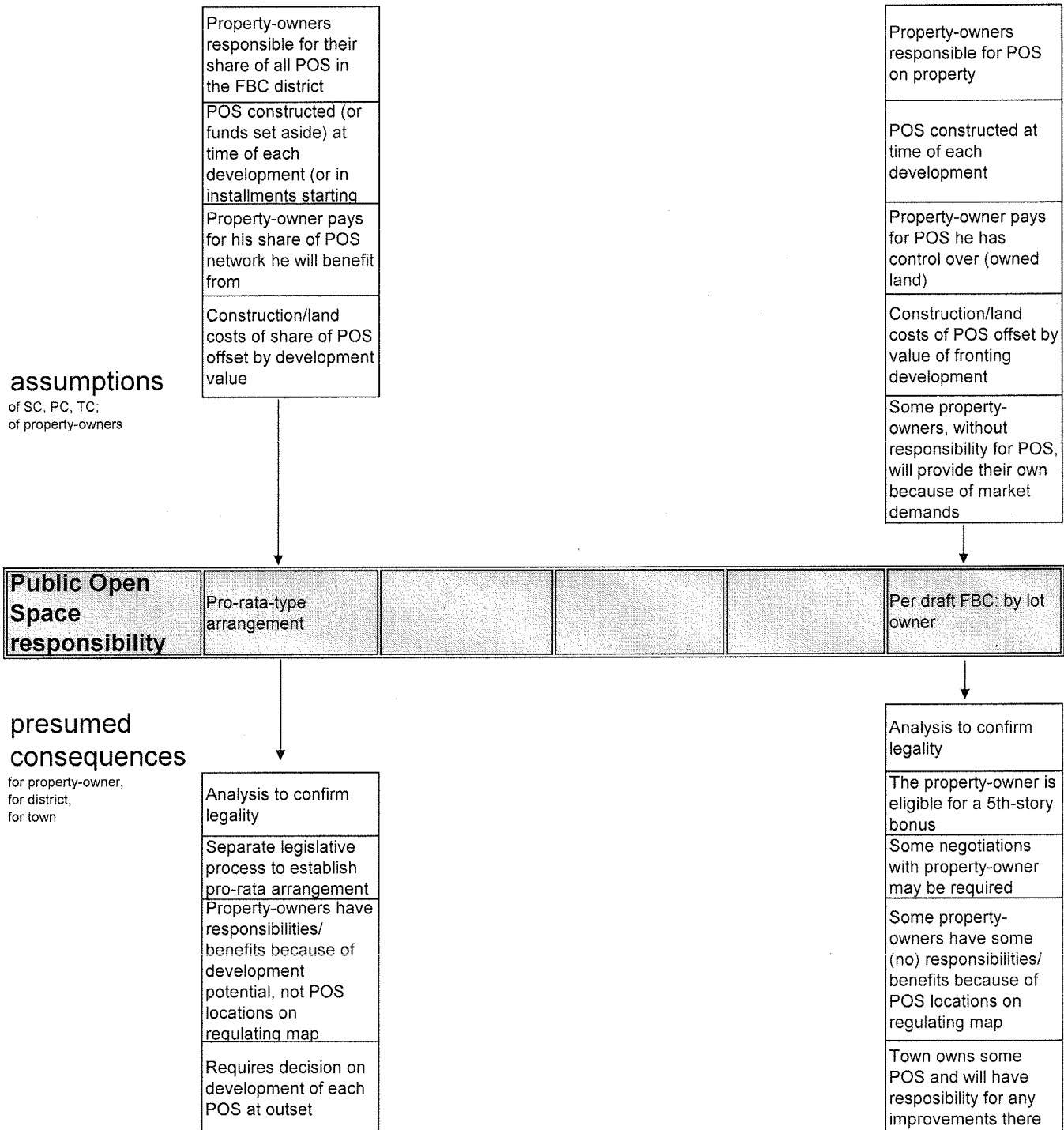
Matrix of Assumptions/Consequences for Alternatives to Address Number of Streets



Matrix of Assumptions/Consequences for Alternatives to Address Responsibility to Provide Streets



Matrix of Assumptions/Consequences for Alternatives to Address Responsibility to Provide POS



Matrix of Assumptions/Consequences for Alternatives to Address Expansion of Nonconforming Structures

assumptions

of SC, PC, TC;
of property-owners

Costs of full compliance with FBC requirements are incentive to keep existing structures
Most property-owners desire latitude to expand existing structures
FBC should be very flexible in allowing expansions
Redevelopment of the entire FBC district will take a long time, & property owners should be given flexibility while market matures

Property-owners desire latitude to expand existing structures	Property-owners desire latitude to expand existing structures	Some property-owners desire latitude to expand existing structures
FBC should be somewhat flexible in allowing expansions	FBC should be somewhat flexible in allowing expansions	FBC should provide little flexibility in allowing expansions
Redevelopment of the entire FBC district will take a long time, & property owners should be given flexibility if the market is not mature & required to conform if they want full build-out under FBC	Redevelopment of the entire FBC district will take a long time, & property owners should be given flexibility if the market is not mature & required to conform if they want full build-out under FBC	Redevelopment of the entire FBC district will take a long time, & property owners should be required to conform sooner rather than later

Expansion of nonconforming structures	Unlimited expansion of existing structures		Per Portsmouth: stepped arrangement	Higher threshold than draft FBC	Per draft FBC: low threshold
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presumed consequences

for property-owner,
for district,
for town

Wide flexibility increases acceptability of FBC by property-owners
High threshold makes expansion of nonconforming structures more desirable to property-owners
Desirability of nonconforming structures extends period of redevelopment
Desirability of nonconforming structures and extended redevelopment complicate creating street/utility network
Most of neighbors' building activity does not initially comply with FBC

Some flexibility increases acceptability of FBC by property-owners	Some flexibility increases acceptability of FBC by property-owners	A little flexibility increases acceptability of FBC by property-owners
Stepped thresholds provide for some expansion while requiring some expansions to conform in part with FBC	High threshold provides for some expansion	Low threshold reduces opportunities for expansion of nonconforming structures
Desirability of nonconforming structures extends period of redevelopment, although some expansions result in some compliance with FBC	Reduced opportunities for expansion shorten financial life of those structures and will speed redevelopment	Reduced opportunities for expansion shorten financial life of those structures and will speed redevelopment
Desirability of nonconforming structures and extended redevelopment complicate creating street/utility network	Even with shortened period of redevelopment, completing street/utility network is difficult	Even with shortened period of redevelopment, completing street/utility network is difficult
Most of neighbors' building activity does not initially comply with all FBC requirements	Most of neighbors' building activity complies with FBC	Most of neighbors' building activity complies with FBC